BAIL SLIP

The Accused/Appellants 1.Raji Gounder, 2.Sekar and 3.Thirisangu was directed to be released on bail as for the order of this Court 03.01.2003 and made in Crl.Mp.No.13264 of 2002 in Crl.Rc case No.2221 of 2002 made in Crl.Appeal No.58 of 2002 on the file of the Addl.District and Sessions Judge F.T.C.No.II Cuddalore.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.2221 of 2002

1.Raji Gounder
2.Sekar
3.Thirisangu .. Petitioners/A1 to A3

vs.

Anusuya .. Respondent/Complainant

Prayer:- This revision has been preferred against the judgment dated 16.12.2002 in C.A.No.58 of 2002 passed by the Additional District & Sessions Judge, FTC-No.II, Cuddalore, confirmed the judgment in C.C.No.498 of 1995 on the file of the Judicial Magistrate No.I, Cuddalore, dated 3.7.2002.

For Petitioners :Mr.R.Rajan

For Respondent :No appearance

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JUDGMENT

This revision has been preferred against the judgment in C.A.No.58 of 2002 on the file of the additional Sessions judge, FTC.No.II, Cuddalore, which had arisen out of the judgment in C.C.No.498 of 1995 on the file of the Judicial Magistrate No.I, Cuddalore. The revision petitioners are A1 to A3 in C.C.No.498 of 1995 on the file of the Judicial Magistrate No.II, Cuddalore.

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2.The short facts of the case of the complainant Anusuya is that the injured Anbu is her son, who is working under one Thilaivana Mudaliar and on 19.5.1995 at about 10.30 am her son Anbu as usual took the sheeps for the purpose of grazing near the lands of Thilaivana Mudaliar. But at about 4.00 pm only the sheeps returned to her house but her son Anbu did not return. So she went in search of her son and found him near the land of Thilaivana Mudaliar and at that time A1 to A3 made her son nude and caught hold of him and A2 had branded him with a hot iron rod on his buttocks and on his toes and that the accused had criminally intimidated to kill if she reveals the incident to any one else, and that immediately she returned to her house with her son and took him to a doctor in a private hospital at Pattampakam, who had referred her son to the government hospital at Cuddalore and that here son was admitted in the government hospital at Cuddalore as an inpatient for nearly one week and that she preferred a complaint with the Nellikuppam police on 3.6.1995, but the police have failed to take any further action on her complaint. Hence, she preferred a private complaint against the accused for an offence under Section 341, 324 & 506(ii) r/w 109 IPC.

3.After taking cognizance of the offence, the learned Judicial Magistrate has issued summons to the accused for their appearance and on their appearance, furnished copies to the accused under Section 207 of Cr.P.C. Before the trial Court P.W.1 to P.W.5 were examined and Ex.P.1 was marked.

4.P.W.1 is the complainant. She had narrated what she had stated in her complaint. According to her, at the time of occurrence A1-Raja Gounder had caught hold of her son Anbu and A2-Sekar had branded him with hot iron rod on the buttocks and that the accused had intimidated her if she prefers any complaint against them, she will be done to death. On the same day, she took her son to the government hospital at Cuddalore informing the doctor that her son had sustained injury due to the contact with electrical live wire. At the instance of her son, a complaint was preferred with the police. But the police have not taken any action on that complaint.

5.P.W.2 is the injured witness. According to him, he was working under Thilaivana Mudaliar at Pattampakam as a shepherd and on the date of occurrence at about noon he fell asleep near the land of Thilaivana Muduliar and at that time A2 & A3 came and woke up him and informed him that his sheep are grassing the crops of Thilaivana Mudaliar and that A2 had abused him in filthy language and A2 & A3 took him to the river bed and A1 had branded him with hot iron rod and that he was admitted in hospital by his mother and he took treatment as an inpatient for nearly 8 days and that only on his instance P.W.1 his mother had preferred the complaint.

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6.P.W.3 is the elder brother of P.W.2, who would also corroborate the evidence of P.W.1 and P.W.2. According to him, he and P.W.1 were in search of P.W.2 on the date of occurrence at about 4.30 pm since he did not return home along with sheeps which were taken by him for grazing in the morning. According to him, A2 had branded P.W.2 with a hot iron rod while A3 & A1 caught hold of him and that the accused have criminally intimidated him and P.W.1 if they reveal the incident to any one else they have to meet with dire consequences. He would also depose that the injured was initially treated at pattampakam private hospital from where he was taken to government hospital Cuddalore.

7.P.W.4 is not an eye witness to the occurrence. But he had seen the injured along with the accused with an injury on the buttocks. He had removed the injured to the hospital at Pattampakam where the doctor had given first aid and referred him to the government hospital at Cuddalore. He would also depose that P.W.1 had informed the doctor that the injured had sustained injury only due to the contact with the live electrical wire.

8.P.W.5 is the doctor, who had treated the injured at government hospital Cuddalore on 6.6.1995. He could find burn injury measuring 20 x 20 cm on the buttocks of P.W.2 and also injury in 4th & 5th toes in both the legs. Ex.P.1 is the wound certificate issued by him.

9. On the basis of the above evidence when incriminating circumstances were put to the accused they have denied their complicity with the crime. They have also examined D.W.1 and D.W.2 on their side as defence witnesses.

10. After going through the evidence both oral and documentary the learned trial Judge has held that the offence under Section 342, 324 against A1 and an offence under Section 324 & 506(ii) IPC against A2 and an offence under section 342 & 324 IPC has been made out and accordingly the learned trial judge has convicted and sentenced A1 under Section 342 IPC to undergo six months RI and a fine of Rs.1,000/- with default sentence and under Section 324 IPC to undergo six months RI and a fine of Rs.1,000/- with default sentence. A2 was convicted and sentenced under Section 324 IPC to undergo six months RI and a fine of Rs.1000/- with default sentence and under section 506(ii) IPC to undergo two years RI and a fine of Rs.2,000/- with default sentence. A3 was convicted and sentenced under Section 342 IPC to undergo six months RI and a fine of Rs.1,000/- with default sentence and under Section 324 IPC to undergo six months RI and a fine of Rs.1,000/- with default sentence.

11.Aggrieved by the findings of the learned trial judge the accused preferred an appeal before the Additional Sessions Judge, FTC.No.II, Cuddalore, in C.A.No.58 of 2002. The learned first appellate judge after hearing the learned counsel on both sides and after going through the evidence let in before the trial Court and after considering the grounds

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raised by the appellant in his memorandum of appeal has confirmed the conviction and sentence passed by the learned trial Judge except the conviction and sentence imposed on A2 under Section 506(ii) IPC. Aggrieved by the findings of the learned first appellate Court, the accused have preferred this revision.

12. Now the point for determination in this revision is whether the conviction and sentence passed against A1 to A3 passed by the first appellate Court is sustainable for the reasons stated in the memorandum of revision?

13. The learned counsel for the revision petitioners would contend that the conviction and sentence passed by the first appellate Court under Section 324 IPC cannot be maintainable for the reasons that there is no acceptable reason given for the inordinate delay in preferring the complaint and that before the doctor, the complainant has given reason for the injury sustained by P.W.2 is due to the contact he had made with a live electrical wire, but in the complaint P.W.1 had attributed specific overtacts against the accused for the injury P.W.2 has sustained and that the third reasoning, according to the learned counsel for the revision petitioners is that even the place of occurrence itself differs from the FIR and private complaint. Hence now let us take one by one the points raised by the learned counsel appearing for the revision petitioner to decide whether they are sustainable.

14. According to the first information report preferred by the injured with the police the occurrence had taken place on 6.6.1995. The FIR was preferred by Anbu on 6.6.1995. According to him, while he was plucking coconuts in the garden of Thilaivana Mudaliar, A1's son came there and he also asked him to pluck another bunch of coconuts and at that time he slipped and fell from the coconut tree and A1 to A3 took him near the river bed and branded him with the hot iron rod in three places on his body and that both his legs were tied up with rope and the accused hanged him by his legs. After giving an assurance that he will not reveal the incident to any one else he was let to go by the accused and that he along with his mother went to the hospital at Pattampakkam from where he was referred to the government hospital at Cuddalore and after getting treatment in the government hospital, he got himself discharged from the hospital and preferred the complaint. According to P.W.1, the mother of Anbu the injured P.W.2, since the police have not taken any action on the complaint preferred by her son Anbu, she had preferred the private complaint on 21.8.1995. So the reason for delay in preferring the complaint is the in action of the police on the complaint preferred by P.W.2 on 6.6.1995. But in the private complaint she would state that the occurrence had taken place in a sugarcane garden belonging to the village headman of pattampakkam. In the complaint she (P.W.1) has stated that A2-Sekar had branded P.W.2 with a hot iron rod below his hip and also on the toes. But while deposing before the Court she is firm that A2-Sekar had branded P.W.2 with hot iron rod on the buttocks, but she had not deposed before the Court that A2 had also branded with hot iron rod on the toes of

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her son P.W.2. But she would admit that while admitting her son in the government hospital at Cuddalore, that she had informed the doctor, who had treated P.W.1, that P.W.2 had sustained burn injury due to the contact with the electrical live wire. But the injured P.W.2 giving go by to the evidence of P.W.1, who is an eye witness, to the effect that at the time of occurrence only A3-Thirisangu had branded him with hot iron rod. So it is highly doubtful whether A2 had branded P.W.2 with hot iron rod or A3 had branded P.W.2 with hot iron rod.

15. P.W.3 is the brother of P.W.2. He would depose that before the doctor at Pattampakkam P.W.2 had informed that he had sustained injury only due to the contact with the live electrical wire. He would further depose that at the time of occurrence he saw his brother P.W.2 lying on the ground and the accused were present at that time and they informed him that they bet P.W.2 since he had allowed his sheep to graze in the crops raised by them. He would further admit in the cross-examination that he has not enquired with his brother how he sustained injury.

16. P.W.4 would also dispose in the cross-examination that P.W.1, the mother of P.W.2, has informed him that P.W.2 had sustained the injury only due the contact with live electrical wire. P.W.5 is the doctor, who had examined P.W.2 on 6.6.1995 would depose that P.W.2 had informed him that four known persons had caused the injury with the hot iron rod on his buttocks and that on examination he could see two injuries one on the buttocks measuring 20 x 20 cm and another on 4th & 5th toes of both legs. Even there is no mention in the complaint about the injury on the toes. P.W.1 in her evidence before the Court has only stated about the injuries caused to P.W.2 by A2 with hot iron road on the buttocks. She has not mentioned anything about the injury caused to her son P.W.2 by the accused on his toes.

17.In this case yet another evidence to be noted is the evidence of D.W.1, the lineman of the Electricity Department, who would depose that electric line is running over the land, beloning to Thilaivana Mudaliar and on 19.5.1995 night he had an information that the electrical wire near Thilaivana Mudaliar's garden snapped and live wire was lying on the ground near his garden and that immediately he stopped the electricity supply. Admittedly occurrence also took place on 19.5.1995 as per the evidence of P.W.1 and P.W.3. The police complaint was also preferred by P.W.1 only on 6.6.1995. P.W.5, the doctor, has also examined P.W.2 only on 6.6.1995. Further P.W.5, the doctor, has also opined in the cross-examination that the injuries found on P.W.2 stated in Ex.P.1 would have also been caused if a person contacts the live electrical wire. Under such circumstances, it cannot be said that the charges levelled against the accused have been proved beyond any reasonable doubt.

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18. In fine, the revision is allowed setting aside the judgment in C.A.No.58 of 2002 on the file of the Additional District & Sessions Judge, FTC.No.II, Cuddalore. The accused are acquitted from the charges levelled against them. Fine amount, if any, paid by the accused is to be returned to them.

ssv

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Additional District & Sessions Judge,
FTC.No.III, Cuddalore.

2.The District & Sessions Judge, Cuddalore.

3.The Judicial Magistrate No.I, Cuddalore.

4.The Chief Judicial Magistrate, Cuddalore.

+1 cc to Mr.R.Rajan, Advocate Sr.No.40864.

ASM(CO)
dcp/19.7.07

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